

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2005 JAN 21 P 1:36
Docket No: 04CV12721RGS

U.S. DISTRICT COURT
DISTRICT OF MASS

RANDOLPH E. GREEN
Plaintiff

v.

THOMAS J. MAY, PRESIDENT
BOSTON EDISON COMPANY DBA
NSTAR ELECTRIC CORPORATION
OF MASSACHUSETTS
Defendant

DEFENDANT'S MOTION TO DISMISS

Now comes the Defendant, Boston Edison Company dba Nstar Electric Corporation of Massachusetts, through counsel and asks this Court pursuant to Federal Rule Civil Procedure 12 (b)(6) to Dismiss the Plaintiff's Complaint with prejudice for reasons stated:

1. The Defendant Thomas J. May is an improper party. Thomas J. May has not at any time had any contract or dealings with the Plaintiff, Randolph E. Green. Clearly stated in the Plaintiff's complaint, is a definitions section as to the parties of the suit. The Plaintiff clearly points out that the party he is suing is Thomas J. May and not Boston Edison Company dba Nstar Electric Corporation of Massachusetts.
2. The Plaintiff claims that the Defendant has violated his rights under the Due Process Clause of the United States Constitution. The Plaintiff has been provided his rights. The Plaintiff was given notice of the case and an opportunity to be heard in a court of law. The Plaintiff was sued by Boston Edison Company dba Nstar Electric in January of 2004, in Roxbury District Court, Docket Number 04CV62, for the Plaintiff's failure to pay an electric bill. The case is still pending. The Plaintiff has not been deprived of any property, money, or rights in relation to the suit filed in Roxbury District Court.
3. The Plaintiff claims that the Defendant has violated Title 15U.S.C.A. section 1692E by not sending the Plaintiff a verified copy of his debt. The Plaintiff had been sued for his delinquent balance. The Plaintiff then filed an answer in which he denied owing any debt. The Plaintiff argues that this denial requires that the creditor supply a certified verification of the debt. The Plaintiff had received for months and years prior to this denial a monthly billing statement. The Plaintiff at no time ever denied or contacted Boston Edison Company dba Nstar Electric to

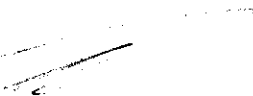
dispute or deny owing the billed amount. Boston Edison Company dba Nstar Electric has not made any false or misleading representations to the Plaintiff in an effort to collect this debt. In fact, there has been little to no contact between the Plaintiff and Boston Edison Company dba Nstar Electric.

4. The Plaintiff claims that Boston Edison Company dba Nstar Electric has violated his Civil Rights under Title 42 U.S.C. section 1983 and 42 U.S.C. 1985. Although, the Plaintiff does not define the basis for his claims, they should be dismissed with prejudice. Boston Edison Company dba Nstar Electric did not under the color of any statute, ordinance, regulation, custom, or usage, of the Commonwealth of Massachusetts or Territory, subject, or caused the Plaintiff to be subjected to any deprivation of any rights, privileges, or immunities secured by the Constitution and laws. The Plaintiff was not denied his rights under the Due Process Clause, nor was denied any rights under the Equal Protection Clause. The Plaintiff's claim that he was sued simply based on race rather than his obligation to pay for his electric consumption is outrageous. The whole basis for the Plaintiff's claims amount to an abuse of process.
5. The Plaintiff has filed this complaint with unclean hand. The Plaintiff has brought this frivolous claim only because he is being sued by the Defendant in another court for an unpaid electric bill. In that pending case, the Defendant has never alleged any damages as a result of being sued by the Defendant.

Wherefore, the Defendant asks this Court to Dismiss the Plaintiff's complaint with prejudice, and order the Plaintiff to pay the Plaintiff reasonable attorney fees, costs, and any other remedy that the Court deems just and proper.

Respectfully submitted for Defendant, Boston Edison Company dba Nstar Electric,
by its attorney.

1-7-05
Date



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